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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Amendment of the Commission's)
Rules Regarding Installment Payment)
Financing for Personal Communications)
Services (PCS) Licensees)

WT Docket No. 97-82

To: The Commission

**PETITION FOR RECONSIDERATION OF
NORTHCOAST COMMUNICATIONS, LLC**

Northcoast Communications, LLC,¹ pursuant to Section 1.429(d) of the Commission's rules, hereby files this Petition for Reconsideration of the Commission's *Order on Reconsideration of the Second Report and Order in WT Docket 97-82 ("Reconsideration Order")*.² While the Commission largely affirmed its prior rulings in this proceeding in its *Reconsideration Order*, the Commission did make certain modifications which cause Northcoast to file this petition. Specifically, Northcoast respectfully requests that the Commission reconsider its decisions to: 1) allow C Block licensees to make different restructuring elections for different Major Trading Areas ("MTAs") in which the C Block licensee holds licenses; and 2) allow C Block licensees to use down payments on deposit with

¹ Northcoast is the licensee of 49 D, E and F Block broadband PCS licenses. An affiliate of Northcoast's, North Coast Mobile Communications, Inc. ("NCMC"), was a bidder in the FCC's C Block auction. However, NCMC withdrew from the auction in late March 1996 after determining that the prices being bid in NCMC's targeted markets had become excessive and outside the scope of even its most aggressive business plan.

² FCC 98-46, released March 24, 1998.

the Commission, which would otherwise be forfeited, to make installment payments on disaggregated licenses or pay suspension interest.

This proceeding began in June 1997 when the Commission first requested comment on proposals to restructure C and F block debt, and the FCC's broadband PCS Entrepreneur Block installment payment procedures. Northcoast has participated in this proceeding from its inception. In June 1997, Northcoast attended and participated in the FCC's Open Forum on the C Block restructuring issue, and also filed comments strongly opposing any attempts to modify the entrepreneur block installment payment process. In the *Second Report and Order* in this docket, the Commission largely adopted the strict position advocated by Northcoast and many other C and F block licensees, and offered C Block licensees limited debt payment relief. Northcoast then filed oppositions to the numerous petitions for reconsideration that were filed by C Block licensees looking for another chance to obtain preferential treatment in resolving their financial difficulties.

While Northcoast has never supported any type of regulatory relief for financially troubled C Block licensees, the modifications adopted by the Commission in the *Second Report and Order* were modest enough for Northcoast to make a business decision not to expend its resources arguing over nuances. However, recent modifications adopted in the *Reconsideration Order*, such as allowing C Block licensees to make restructuring elections on an MTA-by-MTA basis, and allowing disaggregating licensees to use additional portions of their down payment on deposit to make installment or suspension interest payments, go too

far and turn "a menu of measured options" into "a smorgasbord of hearty choices"³.

Consequently, Northcoast must object.

In the *Reconsideration Order*, the Commission generally affirmed the "basic framework" of its restructuring options. However, the *Reconsideration Order* states that certain slight adjustments were made to allow licensees more flexibility in making their elections.⁴ Northcoast disputes the Commission's characterization of the MTA election and disaggregation down payment modifications as minor adjustments.⁵ These modifications will substantially change the C Block playing field. Rather than constituting slight adjustments to allow C Block licensees more flexibility, these modifications could "make or break" the business plans of C Block licensees. What's more, modifications to the C Block restructuring election process are not made in a vacuum. C Block licensees' recently granted ability to keep only their most desirable markets, and their ability to use more of previously forfeited down payments to make installment or suspension interest payments, in fact could have a significant impact on other PCS licensees, especially F Block licensees, which have not been granted any preferential treatment.

Northcoast is at a loss to understand the Commission's continued efforts to accommodate C Block licensees, that unilaterally got themselves into their dire financial

³ *Reconsideration Order*, Separate Statement of Commissioner Susan Ness, Concurring in Part, Dissenting in Part, at p. 3 [hereinafter "Ness Separate Statement"].

⁴ See *Reconsideration Order* at ¶ 10.

⁵ Northcoast wholeheartedly supports the Separate Statement of Commissioner Ness in the *Reconsideration Order*, in which she described the modifications made to the election menu as "potentially counterproductive government intervention in the marketplace". Ness Separate Statement at p. 1.

circumstances,⁶ at the expense of F Block licensees. Northcoast strongly disagrees with the Commission's statement that "the unique and varied circumstances presented" by the C Block auction justify adoption of the "extraordinary procedures" providing for "limited" C Block payment relief.⁷ There are many more similarities than dissimilarities among the C Block and DEF Block auctions. Both were Entrepreneur Block auctions conducted pursuant to the same rules, with preferences granted to qualified bidders.⁸ Both auctions were for a total of 30 MHz of spectrum per market, and both raised billions of dollars for the U.S. Treasury. The end dates of the auctions were less than one year apart (actually, only eight months apart). The only unique aspect of the C Block auction, versus the DEF Block auction, is that many of the winning C Block bidders overbid for their licenses, while DEF Block bidders bid responsibly.

Northcoast feels compelled to reiterate a basic point that it has made repeatedly throughout this proceeding. The Commission's decision to alter C Block licensee payment obligations (by giving them much more flexibility in choosing among restructuring options) can have and has had *dramatic* negative consequences on many F block licensees. In

⁶ See Ness Separate Statement at p. 1. ("At the time of the [C Block] auction, the playing field was level. Everyone believed they were playing by the same rules. Each bidder was on notice to take our rules into consideration when they bid, including the installment terms. Every bid, by every bidder, was entirely voluntary.")

⁷ *Reconsideration Order* at ¶ 10. In fact, Commissioner Powell aptly points out that during the *Reconsideration Order* drafting and consideration process, he heard little discussion about more impending bankruptcies, or that additional changes were required by the reconsideration process in order to lessen that dire possibility for the bulk of C Block licensees, or that C Block bankruptcies are less likely now than last September due to the Commission's actions.

⁸ Ironically, though, C Block bidders received much more favorable government financing terms than F Block bidders.

Northcoast's view, C Block licensees should not receive *any* payment relief. However, this is especially true when such payment relief is not also offered to all other similarly-situated broadband PCS Entrepreneur Block bidders.⁹ The relief adopted by the Commission for C Block bidders in the *Second Report and Order* was more than sufficient, or legally justifiable.¹⁰ Northcoast agrees with Commissioner Powell that the more substantial modifications adopted in the *Reconsideration Order* designed "to help a small subset of C Block companies that find themselves unable to meet the original terms and conditions of the auction [will] do more harm than good."¹¹


For the reasons stated above, Northcoast respectfully urges to Commission to reconsider its decision in the *Reconsideration Order* to allow C Block licensees the option to make restructuring elections on an MTA-by-MTA basis, and to use more of their down payments on deposit to make installment or suspension interest payments on disaggregated licenses.

⁹ It bears reiterating that the Commission's adoption of revised payment obligations for C Block licensees only overtly favors C Block licensees at the expense of F Block licensees, placing F block licensees at a severe competitive disadvantage, and in effect penalizing the only group of entrepreneur block licensees that bid responsibly.

¹⁰ As Northcoast also has repeatedly stated, the Commission's actions in this proceeding likely violate the Administrative Procedure Act's prohibitions against arbitrary and disparate treatment of similarly-situated entities.

¹¹ *Reconsideration Order*, Separate Statement of Commissioner Michael Powell, Concurring in Part and Dissenting in Part, at p. 1.

Respectfully submitted,
NORTHCOAST COMMUNICATIONS, LLC

By: 
Theresa A. Zeterberg
Its Attorney

COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Avenue, NW
Second Floor
Washington, DC 20006
(202) 659-9750

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